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October 21, 2011

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20554

Re: Universal Service and Intercarrier Compensation Reform
WC Docket Nos. 10-90, 07-135, 05-337, 03-109;
CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51

Dear Ms. Dortch,

CapeNet LLC ("CapeNet"), by its attorneys, submits the following comments in the above captioned universal service and intercarrier compensation reform proceedings. CapeNet specifically raises two issues for the Commission's consideration in its reform of universal service and intercarrier compensation.

First, CapeNet does not believe that incumbent price-cap LECs should be granted a right of first refusal to provide broadband in unserved areas of the country as has been proposed in this proceeding. Rather, unserved areas are best served by a competitive reverse auction as a first option, as the Commission first proposed in its initial notice in this docket. There are several supporting CapeNet's position:

1. The Connect America Fund ("CAF") will be limited. A non-competitive process will not encourage the lowest amount of support funds needed to provide service to unserved housing units.
2. Non-incumbents, may be willing to offer a service plan that exceeds the Commission's broadband minimum requirements of 4 mbps downstream and 1 mbps upstream. Such entities are motivated by virtue of their market position to offer greater value at a competitive price, even where the customer is difficult to serve. By granting a right of first refusal to incumbents, there is no way this possibility can be realized.
3. ILECs are already, without assistance, positioned to offer the minimum required broadband service, and have been for years. They are *least* in need of a further public subsidy. In contrast, middle mile network providers under Broadband Technology

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Opportunity Program ("BTOP") have challenging business plans. The ability of middle mile providers to tap the CAF in order to provide last mile services will greatly enhance their ability to create and maintain a sustainable network.

4. Middle mile providers are building advanced fiber optic networks. If granted the ability to utilize CAF funding, they will be in position to offer fiber-to-the-home (a truly "game changing" high speed broadband service to consumers) to unserved areas, with superior broadband and voice services. In contrast, ILECs, which are now dependent upon older, copper-based plant to provide broadband service will be unable to provide such services because this would also require the construction of an entirely new fiber optic backbone.

Second, CAF funds should not be denied to providers in an area where deployment is funded by other public sources such as BTOP funds. BTOP funding was granted in large part to build middle mile networks, not to provide last mile services. Therefore, the Commission's reforms should not prohibit CAF funds from BTOP recipients. There is no reason why an appropriately positioned middle mile provider should not have the ability to attain federal support for a competitive and appropriate last mile offering.

Thank you for your consideration of CapeNet's comments and your efforts on these important matters.

Sincerely,



Lawrence R. Freedman
Attorney for CapeNet LLC